

# Subpart 538.70 - Purchasing by Non-Federal Entities

**Parent topic:** [Part 538 - Federal Supply Schedule Contracting](#)

## 538.7000 Scope of subpart.

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use—

- (a) Federal Supply Schedule 70;
- (b) The Consolidated Schedule contracts containing information technology Special Item Numbers (SINs);
- (c) Federal Supply Schedule 84; and
- (d) Other Federal Supply Schedules as authorized in this subpart.

## 538.7001 Definitions

“Ordering activity” (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see [552.238-112](#)) authorized to place orders under Federal Supply Schedule contracts.

“Preparedness” means actions that may include, but are not limited to planning, resourcing, training, exercising, and organizing to build, sustain, and improve operational disaster response capabilities. Preparedness also includes the process of identifying the personnel, training, and equipment needed for a wide range of potential incidents, and developing jurisdiction-specific plans for delivering capabilities when needed for an incident.

“Recovery” means actions including, but not limited to, the development, coordination, and execution of service- and site-restoration plans; the reconstitution of Government operations and services; individual, private-sector, nongovernmental, and public-assistance programs to provide housing and to promote restoration; long-term care and treatment of affected persons; additional measures for social, political, environmental, and economic restoration; evaluation of the incident to identify lessons learned; post-incident reporting; and development of initiatives to mitigate the effects of future incidents.

“Relief” means disaster “response” and “recovery.” Please see full definitions for these terms.

“Response” means immediate actions taken during a disaster, or in its immediate aftermath, in order to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to support short-term recovery.

“Schedule 70,” as used in this subpart, means Schedule 70 information technology contracts, and Consolidated Products and Services Schedule contracts containing information technology SINs. The Consolidated Products and Services Schedule is a compilation of multiple individual Federal Supply

Schedules; therefore, only the SINs that fall under Schedule 70 of the Consolidated Products and Services Schedule will apply to Cooperative Purchasing. No other Schedules, or SINs, containing information technology outside of Schedule 70 SINs, and Consolidated Products and Services Schedule contracts containing Schedule 70 SINs, will apply.

“Schedule 84” means the Federal Supply Schedule for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal Supply Classification Code Group 84 or any amended or subsequent version of that Federal supply classification group).

“State and local government entities,” as used in this subpart, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) “Local educational agency” has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 ([20 U.S.C.7713](#)).

(2) “Institution of higher education” has the meaning given that term in section 101(a) of the Higher Education Act of 1965 ([20 U.S.C.1001\(a\)](#)).

(3) “Tribal government” means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act ([43 U.S.C.1601 et seq.](#)).

## **538.7002 General.**

(a) [40 U.S.C. 501](#), (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under [40 U.S.C. 502](#), the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E-Government Act of 2002 amends [40 U.S.C. 502](#) to authorize the Administrator of General Services to provide for use of certain Federal Supply Schedules of the GSA by a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher

education).

(c) Pub. L. 110-248, The Local Preparedness Acquisition Act, authorizes the Administrator of General Services to provide for the use by state or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Schedule 84).

(d) Pub. L. 109-364, the John Warner National Defense Authorization Act for Fiscal Year 2007 authorizing state and local governments, to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121 et seq.](#)) or to facilitate for recovery from terrorism or nuclear, biological, chemical, or radiological attack. Public Law 111-263, the Federal Supply Schedules Usage Act of 2010 authorizing state and local governments to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate disaster preparedness or response.

(e) Public Law 111-263, the Federal Supply Schedules Usage Act of 2010, authorizes the American National Red Cross to use Federal Supply Schedule contracts to purchase goods or services to be used in furtherance of its purposes as set forth in its federal charter ([36 U.S.C. 300102](#)).

(f) Public Law 111-263, the Federal Supply Schedules Usage Act of 2010, authorizes other qualified organizations to use Federal Supply Schedule contracts to purchase products and services in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency. Other qualified organizations must meet the requirements of [42 U.S.C. 5152](#).

(g) A listing of the participating contractors and SINs for the goods and services that are available under these authorized Federal Supply Schedules, is available in GSA's e-Library at [www.gsa.gov/elibrary](http://www.gsa.gov/elibrary).

## **538.7003 Policy.**

*Preparing solicitations when schedules are open to eligible non-federal entities.* When opening authorized Federal Supply Schedules for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete "Government" or similar language referring to the U.S. Government and substitute "ordering activity" or similar language when preparing solicitations and contracts to be awarded under authorized Federal Supply Schedules. When such changes are made, the word "(DEVIATION)" shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

(a) 52.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services.

- (b) 52.216-18, Ordering.
- (c) 52.216-19, Order Limitations.
- (d) 52.229-1, State and Local Taxes.
- (e) 52.229-3, Federal, State, and Local Taxes.
- (f) 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts.
- (g) 52.232-17, Interest.
- (h) 52.232-19, Availability of Funds for the Next Fiscal Year.
- (i) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.
- (j) 52.232-36, Payment by Third Party.
- (k) 52.237-3, Continuity of Services.
- (l) 52.246-4, Inspection of Services-Fixed Price.
- (m) 52.246-6, Inspection—Time-and-Material and Labor-Hour.
- (n) 52.247-34, F.O.B. Destination.
- (o) 52.247-38, F.O.B. Inland Carrier Point of Exportation.

## **538.7004 Solicitation provisions and contract clauses.**

- (a) The contracting officer shall insert the clause at [552.238-112](#) , Definition (Federal Supply Schedules)-Non-Federal Entity, in solicitations and contracts for all Federal Supply Schedules.
- (b) The contracting officer shall insert the clause at [552.238-113](#) , Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for all Federal Supply Schedules.
- (c) The contracting officer shall insert the clause at [552.238-114](#) , Use of Federal Supply Schedule Contracts by Non-Federal Entities, in solicitations and contracts for all Federal Supply Schedules.
- (d) See [552.101-70](#) for authorized FAR deviations.